Potential Phase 2 Rulemaking Issues

Chapter 194-37 WAC

Energy Independence Act

March 31, 2014

2014 Statutory Changes to the Energy Independence Act	
Bill	**Summary of Effect**
ESHB 1643 - Regarding energy conservation under the energy independence act.	• Adoption-by-reference rulemaking if the Northwest Power and Conservation Council revises its conservation methodologies after 2014. • Utilities exceeding conservation targets in 2014-15 or later (2012-13 for Cowlitz PUD) may apply the excess toward conservation targets in future biennial periods.
EHB 2733 - Designating certain hydroelectric generation from a generation facility located in irrigation canals and certain pipes as an eligible renewable resource under chapter 19.285 RCW.	• Adds the following to the definition of "eligible renewable resource": *Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington where the generation does not result in new water diversions or impoundments.* • Removes irrigation canals and pipes from the incremental hydro definition.

Comments Received Regarding the Phase 1 Proposed Rule – Agency Response Indicates An Open Issue	
Phase 1 Comment	**Agency Response**
Reciprocal determination of incremental hydro capacity Add a provision that requires Commerce and the Utilities and Transportation Commission to recognize and adopt one another's determinations of the amount of incremental electricity produced by the hydroelectric generation facility. [WAC 194-37-040(11)]	The final rule does not incorporate this recommendation. It requires further consideration by stakeholders and the Utilities and Transportation Commission.
Counting conservation savings from high-efficiency cogeneration Restore the provision in existing rule that a utility may count only 12 months of savings from a high-efficiency cogeneration resource. [WAC 194-37-080(10) and WAC 194-37-085]	The final rule does not incorporate this recommendation. It is repetitive of existing rule language in WAC 194-37-080(3), which is not amended. The broader question of whether to measure conservation in terms of first-year savings or life-cycle savings may be considered in subsequent discussions with stakeholders.
Reporting of renewable costs by a utility using the no-load growth provision Revise the existing reporting requirements for utilities using the no-load growth provision to use the term "investment" instead of "delivered cost." [WAC 194-37-110(4), renumbered as (5) in the proposed rule]	The final rule does not incorporate this recommendation. Commerce has not proposed any changes to these reporting requirements. The recommended change may be considered in subsequent discussions with stakeholders.
Retirement of renewable energy credits by a utility using the no-load growth provision Exclude RECs purchased to meet the 1% investment requirement from the requirement to retire. The statute requiring RECs to be used only once, RCW 19.285.040(2)(e), does not apply when a utility uses the no-load growth provision. [WAC 194-37-120]	The final rule does not incorporate this recommendation. The proposed requirement to retire any REC used to comply with the statute is consistent with RCW 19.285.040(2)(e). This statute was formerly Section 4 of Initiative 937 and the word "section" refers to all of RCW 19.285.040, including all of the subsections (2)(a) through (k). Additionally, the requirement to retire is a fundamental aspect of the REC tracking system adopted by Commerce under WAC 194-37-210. The rule does not specifically address the issue of use and retirement of RECs when a utility complies using the no-load growth approach [RCW 19.285.040(2)(d)].
Documentation of RECs related to the BPA residential exchange program The rules should address the treatment of environmental attributes allocated as a result of the BPA residential exchange program. [WAC	The final rule does not incorporate this recommendation. The comment does not provide a specific recommendation. The issue, including specific rule language, may be considered in subsequent discussions with stakeholders.

Comments Received Regarding the Phase 1 Proposed Rule – Agency Response Indicates An Open Issue	
Phase 1 Comment	**Agency Response**
194-37-120(4)]	
Reconciliation and verification of RECs allocated by BPA to utilities Comment asks if Commerce will conduct a reconciliation and verification of RECs and electricity from BPA that are used to comply with the Energy Independence Act. [WAC 194-37-120(4)]	The comment does not propose a change in rule language.

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194-37-010 Purpose and scope.	The purpose of this chapter is to implement the requirements of the Energy Independence Act, chapter 19.285 RCW.
194-37-020 Applicability.	The provisions of this chapter apply to consumer-owned electric utilities that provide electrical service to more than twenty-five thousand retail customers in the state of Washington.
194-37-030 Severability.	If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.
194-37-080 Documentation of conservation savings. *Note: Feb 2014 amendment moved combined heat and power to a separate section and deleted references to PTR.*	(1) The utility shall document: (a) That it achieved its biennial conservation target; (b) The total savings in customer efficiency measures; and (c) If included in the target, the savings in the production and distribution sectors. (2) A conservation measure or program counts towards a utility biennial target if it meets the following criteria: (a) The conservation has a measure life of at least two years, or, if the measure life is less than two years the utility can verify that it has acquired the conservation for the entire biennium; (b) It meets the definitions of conservation and cost effective as contained in WAC 194-37-040; and (c) The NWPCC includes the measure or program in its power plan, or the measure or program is not identified by the NWPCC but it meets the definition of cost effective in RCW 19.285.030. (3) The utility shall count the total first year savings of a conservation measure in the year during which either the measure was installed or the utility paid for it. (4) Each utility may count towards its biennial conservation targets the proportionate share of savings resulting in its service territory from the following conservation efforts during the one biennium in which either the measure or program was placed in service or the utility paid for the measure: (a) End-use savings from region-wide conservation projects that are centrally funded by BPA and for which the utility shared in the funding through its BPA rates. (b) Savings from regional market transformation efforts if the NWPCC includes the program measures in its most recently published *Power Plan's* conservation resource potential or, as a newly emerging technology, the measure has yet to be included in the NWPCC's resource potential. Each utility will report a proportion of savings from these programs using established distribution methods, based on each utility's relative share of funding the regional market transformation effort through both direct funding and indirect funding through their BPA rates.

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	(c) Savings from improved federal minimum energy efficiency standards or Washington state building energy code improvements or improved state appliance codes and standards in the biennium in which they become effective, as proportionate to the utility's service territory. After that biennium, a utility may no longer include savings from those specific codes and/or standards in its next ten-year potential. (5) Utilities may count savings from more stringent local building and/or local equipment codes and standards, including utility new service or connection standards, towards meeting their biennial conservation target in the biennium in which they become effective and in each biennium the local standards continue to be enforced and achieve incremental savings above minimum state energy codes or minimum federal energy standards. (6) A utility cannot count the loss of load due to curtailments or matters outside of the utility's control (such as a facility shut-down) as achievement towards its conservation targets. However, such losses of load may change the level of current and future targets to the extent that they reduce the conservation potential available to the utility. (7) The energy savings from an increase in distribution efficiencies are described, documented and counted under WAC 194-37-090. The energy savings from an increase in production efficiencies are described, documented and counted under WAC 194-37-100. (8) Conservation savings from utility programs for measures for which the NWPCC and the regional technical forum have established per unit energy savings values will be based on the per unit savings set by the NWPCC's regional technical forum unless the utility documents its variations in electricity saving estimates from the regional technical forum. (9) Conservation savings from utility programs for custom measures shall be developed pursuant to the NWPCC's custom requirements or through a similar analytical framework. (10) A utility may document shortfalls in meeting its biennial conservation target due to lack of customer participation. Documentation of such shortfalls shall include a demonstration that: (a) A broad array of marketing and program options were provided to customers throughout the biennium; and (b) The utility offered throughout the biennium to pay customers an incentive in an amount equal to the utility's full avoided cost over the lifetime of measures, up to one hundred percent of the incremental cost of measures. Any such shortfall cannot be automatically deducted from the utility's conservation potential assessment for the subsequent biennium.
194-37-090 Additional documentation of	(1) To the extent a utility can document a distribution system upgrade or management practice results in lower line losses and/or transformation losses, the avoided energy supply requirement to serve customers may be

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efficiency from distribution system loss reduction improvements, including peak demand management and voltage regulation. *Note: Feb 2014 amendment deleted references to PTR.*	included in the utility's assessment of its ten-year resource potential and may count as conservation achievement towards the utility's biennial target. (2) A utility that counts distribution system improvements in meeting its obligations under RCW 19.285.040 shall document these savings on either a component-performance basis or a system-analysis basis and shall indicate these savings distinctly from end-use and production efficiency savings. (a) Component-performance basis. A utility that implements the component-performance basis for documenting distribution system improvements shall identify the components of the distribution system that were replaced, and the savings from replacement. For components that are not included in the list of measures approved by the regional technical forum, the calculation shall be prepared under the direction of, and carry the stamp of a registered professional electrical engineer licensed by the Washington department of licensing. (b) System-analysis basis. A utility that implements the system analysis basis for documenting conservation savings from distribution system improvements shall provide the following: (i) For distribution system upgrades, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system being replaced or upgraded to the final system as installed. (ii) For conservation voltage regulation, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system before and after the implementation of a voltage regulation program. The difference in annual kilowatt-hour requirement at the utility point(s) of receipt (for distribution utilities) or net energy for load for generating utilities may be counted as conservation savings. (iii) For peak demand management, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system before and after implementation of the peak demand management program. The change in net energy losses may be counted as conservation savings. Any net reduction in energy sales (economic curtailment) shall not be included in conservation savings. (iv) The distribution flow analysis conducted for (b)(i), (ii), or (iii) of this subsection shall be prepared under the direction of, and carry the stamp of a registered professional electrical engineer licensed by the Washington department of licensing.
194-37-100 Additional documentation of improved efficiency from	(1) A utility will measure production efficiency improvements as the fraction of fuel savings achieved by the utility. The percentage reduction in fuel use per kilowatt-hour will be applied to the annual generation to determine the amount that is to be reported as conservation. (2) A utility that includes production efficiency improvements in its

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production facilities. *Note: Feb 2014 amendment deleted references to PTR.*	annual report pursuant to RCW 19.285.070 shall document the electricity savings for each generating unit with the following information certified by a registered professional engineer licensed by the Washington state department of licensing: (a) The first twelve-month electricity savings that the utility is counting towards its biennial target; (b) A description of the efficiency improvements made to the generating unit; (c) Annual fuel use for three preceding years, in quantity units and million British thermal units; (d) Annual electrical output for three preceding years, in kilowatt-hours; (e) The amount of capital investment and/or annual operating expenditure associated with the efficiency improvements; (f) The cost-effectiveness analysis prepared by the utility in planning the efficiency improvement(s); (g) Any post-retrofit analysis prepared by the utility in evaluating the performance and/or cost-effectiveness of the efficiency improvement(s); (h) A simple calculation showing the fuel use per kilowatt-hour before the efficiency improvement, the fuel use per kilowatt-hour after the efficiency improvement, and the amount of energy conservation being reported as the product of the percentage improvement in fuel use per kilowatt-hour and the number of kilowatt-hours generated; and (i) If efficiency improvements are installed at the same time as pollution control equipment that may itself affect efficiency, the utility may provide documentation of the effect of the efficiency improvements alone on the fuel consumption per kilowatt-hour of the production facility. In this situation, the utility shall provide a description of the changes made, the capital cost expended for both efficiency changes and pollution control equipment, and an analysis of the impact of each on the fuel use per kilowatt-hour of the production facility. (3) Improvements that are included in the list of measures approved by the regional technical forum need not carry the certification of a professional engineer and may instead use the savings deemed by the regional technical forum. (4) A utility shall not count towards its biennial conservation target the results from efficiency improvements made to hydropower facilities that are qualified incremental hydropower efficiency improvements and are counted towards any utility's renewable energy targets under RCW 19.285.040 or 19.285.050.
194-37-130 Documentation of incremental	(1) Utilities may count toward their annual renewable resource targets incremental power acquired from qualified incremental hydropower efficiency improvements made at the following facilities since 1999:

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hydropower.	(a) Hydropower facilities in the Pacific Northwest owned by a qualifying utility where the new generation does not result in new water diversions or impoundments. (b) Hydroelectric generation facilities in irrigation pipes and canals located in the Pacific Northwest, where the additional generation does not result in new water diversions or impoundments. (2) The utility shall calculate renewable resource power from incremental hydropower as the increase in annual megawatt-hours of generation attributable to the qualified incremental hydropower efficiency improvements under average water generation. (3) The increase in annual megawatt-hours of generation attributable to the qualified incremental hydropower efficiency improvements shall be documented by engineering studies or with before and after generation data. The documentation shall clearly explain: (a) Where the facility is located; (b) When the improvements were made; (c) How the amount of generation in "average water generation" was calculated; (d) What other factors may have caused an increase in electricity production and how the amount "attributable to the qualified improvements" was extracted from the total increase; (e) How and why the "qualified improvements" increased hydropower production; and (f) How the utility came to acquire the incremental output associated with the qualified improvements.
194-37-150 Financial documentation of annual revenue requirement.	(1) For purposes of the report filed pursuant to RCW 19.285.070, a utility shall document its annual revenue requirement. (2) A utility that uses a different basis for the determination of its annual revenue requirement for purposes of calculating what it expects to recover or actually recovers through retail electricity sales in the state of Washington in that year may use that number in the calculation of the cost cap and must provide documentation to support this alternative approach.
194-37-160 Documentation of financial cost cap—Current information and timeline.	By January 1 of the first target year that a utility fulfills its renewable energy requirements under RCW 19.285.050, the utility shall select one of the following methodologies for documenting the incremental cost of all eligible renewable resources acquired thereafter by that utility: (1) Annual update methodology. In each year that a utility fulfills its renewable energy requirements by complying with the cost cap identified in RCW 19.285.050 it must document its calculations no later than January 1 of the target year. The utility will use the most current information available to the utility within twelve months prior to the initial documentation of the cost

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	cap pursuant to WAC 194-37-170 through 194-37-190. The utility will update this documentation in its June 1 report submitted pursuant to RCW 19.285.070. These annual updates of costs, based on the most current information available, apply to both the eligible renewable resource and the substitute resource. (2) Permanent one-time methodology. For each new investment in an eligible renewable resource, a utility shall perform a one-time calculation of the levelized incremental cost pursuant to WAC 194-37-170 through 194-37-190. The levelized incremental cost shall be a single annual value expressed in real, constant-year dollars. The levelized incremental cost for each eligible renewable resource project or purchase, calculated through this one-time analysis in the year of acquisition, shall be allowed to inflate utilizing the Producer Price Index over the life of the eligible renewable resource after the initial calculation. The utility will include a determination of incremental cost for each new investment in an eligible renewable resource and inflation-adjusted incremental costs for previous eligible renewable resource investments in its June 1 report submitted pursuant to RCW 19.285.070, beginning in the year the utility complies with the cost cap identified in RCW 19.285.050.
194-37-170 Documentation for financial path—Levelization of costs.	(1) Each utility must document its calculation of the levelized annual incremental cost of eligible renewable resources. Utilities are encouraged, but not obligated, to use the following methodology: **Step 1:** Calculate the net present value of the cost of the utility's eligible renewable resource and substitute resource over an equivalent contract length or facility life. **Step 2:** Calculate equal nominal values over the appropriate contract length or facility life that have a net present value equal to those calculated in Step 1, using the same discount rate. **Step 3:** Calculate the annual difference between the levelized delivered cost for the eligible renewable resource and the substitute resource to determine the levelized incremental cost of the eligible renewable resource. A utility that uses the annual update methodology must document the basis for any change to the levelization methodology used in a prior June 1 report to levelize the costs of an eligible renewable resource and its associated substitute resource. (2) Regardless of the methodology chosen to levelize costs, utilities must document the basis for their chosen method for levelizing costs. (3) Utilities must document the basis for the discount rate used in its levelized cost calculations. (4) Utilities must document how the discount rate used to perform the levelized cost calculations is consistent with the inflationary assumptions incorporated into the delivered cost projections for the eligible renewable

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	resource and substitute resource. (5) Utilities must document how the method and assumptions used to levelize delivered costs for the eligible renewable resource are consistent with those used to levelize the delivered cost of the associated substitute resource.
194-37-180 Documentation of financial path—Delivered cost.	(1) The delivered cost of a resource includes all direct and indirect costs associated with that resource being delivered to the distribution system of a utility over the contract length or facility life of the delivered resource. Direct and indirect costs may include operating and capital expenses related to the delivered resource. (2) Using the Uniform System of Accounts of the Federal Energy Regulatory Commission (FERC) as an illustration, the reported resource costs are expected to generally fall within, but not necessarily be limited to, the following cost accounts: *Operating Expenses* Accounts 500-557: Production Expense Account 565: Wholesale Wheeling Expense Accounts 920-935: Administrative and General Expense Account 408.1: Taxes Other than Federal Income Taxes *Capital Expenses* Accounts 403-407: Depreciation and Amortization Expense Accounts 427-431: Interest-Related Expenses (3) A utility may include actual costs in order to equitably compare the costs of eligible renewable resources and substitute resources. This may include the actual costs of transmission, firming, shaping, integration, and project specific development costs. (4) Utilities are encouraged to use the FERC system of accounts to document the delivered cost of resources. Regardless of the accounting convention used, utilities must document the delivered cost estimates for eligible renewable resources and their associated substitute resources in a manner consistent with generally accepted accounting standards.
194-37-190	(1) In support of its annual filings to the department under RCW

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Documentation of financial path—Substitute resource and resource equivalence.	19.285.070, utilities must document the type, availability, and cost of the reasonably available substitute resource used to calculate the incremental cost of an eligible renewable resource. (a) In documenting the incremental cost under RCW 19.285.050 (1)(b), a utility is encouraged to identify substitute resources using its integrated resource planning process, if one is available. If a utility elects to choose a substitute resource from a different source other than its most recently published integrated resource plan, it must document the basis for this decision. Documentation of the cost of a substitute resource may include, but is not limited to, formal offers for the sale of electricity, or published cost projections from reputable third-party sources. (b) In its selection of a substitute resource, the utility shall develop documentation demonstrating that the substitute resource satisfies the requirements set forth in RCW 19.285.050. The requirements are: (i) Equivalence between the eligible renewable resource and the substitute resource by demonstrating the equivalence in the amount of energy produced by each resource; (ii) Equivalence between the eligible renewable resource and the substitute resource by demonstrating the same contract length or facility life of each resource; (iii) The substitute resource is reasonably available to the utility; and (iv) The substitute resource does not qualify as an eligible renewable resource. (c) Only supply-side substitute resources shall be used by utilities in the calculation of the incremental cost of eligible renewable resources. (d) When the renewable requirements under RCW 19.285.040(2) result in a utility having resources in excess of its load, the utility may use that excess resource as the substitute resource if the substitute resource requirements of (b) of this subsection are otherwise satisfied. The utility will document the resale revenues, net of transaction costs, received through the sale of excess resources or the purchase price for the sale of the excess facility sold as a result of the requirement to acquire eligible renewable resources. A utility that uses a value other than the documented resale revenue in the determination of the levelized delivered cost of the substitute resource, such as a forecast of projected market prices, must provide documentation to support this alternative approach. (e) A utility may use foregone power purchases from BPA, plus any billing credit obtained for reducing its purchases from BPA, as the basis for the cost of the substitute resource if: (i) The substitute resource requirements of (b) of this subsection are otherwise satisfied; (ii) It is entitled under its BPA power sales contract to have the BPA

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	meet its net power requirements for the expected life of an eligible renewable resource or eligible renewable resource purchase; and (iii) As a result of meeting the renewable requirements under RCW 19.285.040(2), it foregoes part of its BPA entitlement in order to obtain that eligible renewable resource. (2) For an eligible renewable resource acquired prior to the passage of chapter 19.285 RCW, November 7, 2006, a utility must support the selection of the related substitute resource used in the determination of the incremental cost under RCW 19.285.050 with documentation that was available at the time of the utility's decision to acquire the eligible renewable resource. If no such documentation is available, the incremental cost of an eligible renewable resource acquired prior to the passage of chapter 19.285 RCW will be assumed equal to zero.
194-37-200 Financial documentation path using renewable energy credits.	A utility may elect to invest in RECs to meet any portion of, or the entirety of, each annual renewable resource target in RCW 19.285.040(2) or 19.285.050(1). If the cost of the RECs and the incremental cost of acquired renewable resources, as documented according to WAC 194-37-150 through 194-37-190, for any one year meets or exceeds four percent of the utility's annual revenue requirement, the utility shall document that the utility achieved the four percent cost cap alternative compliance path in RCW 19.285.050(1). The documentation must include copies of its WREGIS RECs, copies of purchase contracts, and its annual revenue requirement.